



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NYAMIRA  
(CHERERE-J)  
HCCRMISC E008 OF 2026**

**BETWEEN  
JUSTUS MONGEI  
NYAKUNDI.....APPLICANT  
VERSUS  
REPUBLIC.....  
RESPONDENT**

**RULING**

1. The Applicant, Justus Mongei Nyakundi, has moved this Court by a Notice of Motion dated 04<sup>th</sup> February 2026 seeking leave to appeal out of time against the judgment of the Keroka MCSO E047 of 2023 in which he was sentenced on 21<sup>st</sup> January 2025 and condoned to serve 15 years imprisonment for the offence of defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act.
2. The application is supported by the Applicant's affidavit in which he deposes that following his conviction he became confused and was therefore unable to lodge an appeal within the prescribed statutory period of fourteen days. He now seeks an opportunity to appeal out of time and further prays that the Court waives the costs of the application as he is currently incarcerated at Kisii Main Prison.

3. The power of this Court to admit an appeal out of time in criminal matters is donated by section 349 of the Criminal Procedure Code, which provides that an appeal may be admitted after the lapse of the prescribed period if the appellant satisfies the Court that he had good cause for not filing the appeal within time.
4. The judgment sought to be appealed from was delivered on 21<sup>st</sup> January 2025, and the present application is dated 04<sup>th</sup> February 2026, a delay of slightly over one year. Although the delay is considerable, the Court takes into account that the Applicant is a lay person currently serving a custodial sentence and may not have had prompt access to legal assistance necessary to institute an appeal within time.
5. The right of appeal is a fundamental component of the criminal justice system and courts generally lean towards allowing an applicant an opportunity to ventilate an intended appeal unless the delay is inordinate and unexplained or the application is plainly an abuse of the process of the court.
6. The Application is not opposed. I am satisfied that it is in the interests of justice to grant the Applicant an opportunity to file his appeal.

7. Consequently, the Notice of Motion dated 04<sup>th</sup> February 2026 is allowed on the following terms:

- 1) The Applicant is granted leave to file an appeal out of time against the judgment in Keroka MCSO E047 of 2023**
- 2) The Deputy Registrar shall facilitate the supply of proceedings to the Applicant within 30 days of today's date**

**DELIVERED AT NYAMIRA THIS 10<sup>th</sup> DAY OF March 2026**



**WAMAE.T. W. CHERERE  
JUDGE**

**Appearances**

**Court Assistant - Anita**

**Applicant - Present**

**For the DPP - Mr. Chirchir (SADPP)**